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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

MOSHE BOOSY,

Plaintiff and Appellant,

v.

AMOURA CAFÉ, LLC, SHIHADDEH
INVESTMENTS, INC., and BASSAM
SHIHADDEH,

Defendants and Respondents.

A149938

(San Mateo County
Super. Ct. No. CIV 534894)

Plaintiff Moshe Boosy sought monetary damages against defendants Amoura Café, LLC, Shihadeh Investments, Inc, and Bassam Shihadeh (collectively, defendants) for construction work. Plaintiff appeals from judgment against him after the court entered a direct verdict.

We affirm.

BACKGROUND

Plaintiff filed an unverified complaint against defendants for breach of contract and common count that did not include an allegation that he was a duly licensed contractor at all relevant times. Defendants answered with a general denial.

The jury trial took place in September 2016. It is undisputed that plaintiff undertook tiling work for defendants. He sought additional payment from defendants for the reasonable value of his services and based upon a verbal agreement. The parties

disagreed whether plaintiff was to undertake certain tiling work and, if so, how much he would be paid.

After both parties rested, defendants sought directed verdict on the basis that plaintiff had not proven he held the requisite contractor's license throughout the period of time that he was doing the work at issue, citing to Business and Professions Code section 7031.¹ The trial court granted the motion and entered judgment for defendants on September 26, 2016. The appeal was timely filed.

DISCUSSION

Plaintiff appeals the trial court's grant of the motion for directed verdict. A trial court may grant a directed verdict "only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence to support it. [Citation.]" (*Gonzales v. City of Atwater* (2016) 6 Cal.App.5th 929, 946.) As a directed verdict allows a party to prevail as a matter of law based upon the admitted relevant evidence, we review the trial court's ruling under a de novo standard of review. (*Id.* at pp. 946–947.)

The Contractors' State License Law (CSLL), section 7000 et seq., is a comprehensive legislative scheme governing the California construction business. It provides that contractors performing construction work must be licensed unless exempt. (§§ 7026 et seq., 7040 et seq.) The CSLL is applicable to the instant action as plaintiff was a contractor performing construction work for which a license was required. Plaintiff was performing tiling work on a structure and therefore was "a person who. . . does [by] himself . . . construct, alter, repair, add to, subtract from, [or] improve . . . any . . . structure."² (§ 7026.)

With an exception not applicable to the instant action, the CSLL explicitly prohibits contractors from bringing an action for unpaid work or from recovering

¹ Unless otherwise specified, all further references are to the Business and Professions Code.

² Neither party raises the issue of whether the work performed by plaintiff required a contractor's license and, rather, implicitly argue and concede that it did.

payment for work without clearly alleging licensure: “. . . no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter *without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract regardless of the merits of the cause of action brought by the person . . .*.” (§ 7031, subd. (a), italics added.) “[T]he bar extends to actions ‘in law or equity’ and applies ‘regardless of the merits of the cause of action.’ [Citation.]” (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 425.)

Plaintiff did not allege that he was a duly licensed contractor. While the trial court focused on whether plaintiff had submitted evidence of licensure pursuant to subdivision (d) of section 7031, which requires proof of licensure if the issue is controverted, we do not get to proof of licensure as plaintiff never pled the existence of licensure. (*Leyva v. Crockett & Co., Inc.* (2017) 7 Cal.App.5th 1105, 1108 [appellate court should affirm the judgment of the trial court if it is correct on any theory applicable to the case].) “Read together, subdivisions (a) and (d) of section 7031 provide that the contractor must plead licensure, and, if licensure is ‘controverted,’ must also prove licensure by producing a verified certificate.” (*Advantec Group, Inc. v. Edwin’s Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 626–627.) As defendants prevail as a matter of law based upon plaintiff’s failure to allege licensure pursuant to section 7031, we affirm the trial court’s entry of directed verdict.

Plaintiff also appeals the trial court’s refusal to reopen evidence regarding his contractor’s license. As we affirm the entry of directed verdict based upon the failure to allege licensure, we need not and do not reach this issue.

DISPOSITION

The judgment is affirmed.

Petrou, J.

WE CONCUR:

Siggins, P.J.

Wiseman, J.*

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.